

POST INSPECTION GUIDE



**For Kentucky's
Employers & Employees**



KY OSH Program
September, 2004

"No individual in the United States shall, on the grounds of race, color, religion, sex, national origin, age, disability, political affiliation or belief, be excluded from participation in, or denied the benefits of, or be subjected to discrimination under any program or activity under the jurisdiction of the Kentucky Department of Labor."

CONTENTS

After the Inspection	2
Types of Violations	2
Willful	
Serious	
Repeated	
Fixed Establishments	
Nonfixed Establishments	
Other	
Penalties	3
Posting Requirements	4
Employer Options	5
How to Comply	5
Informal Conference	6
How to Contest	7
The Contest Process	7
How to File for an Extension	
of Abatement Period	8
Temporary and Permanent Variances	9
Employee Course of Action	10
Follow-up Inspection and	
Failure to Abate	10
Employer Discrimination	11
Additional Information	11
Voluntary Compliance - Division of	
Education and Training	11

TO THE READER

The Kentucky statutes and laws for occupational safety and health (KRS Chapter 338) were passed in order to assure so far as possible every working man and woman in the Commonwealth safe and healthful working conditions. The Kentucky Office of Occupational Safety and Health is expending every effort to make this goal a reality and we cannot do it without your continuing help and support. Therefore, we are providing you with this pamphlet so that you can help us help you. It is designed to explain the options available to you and is part of our ongoing program to promote cooperation among labor, management, and government.

AFTER AN INSPECTION

An inspection of your workplace was conducted in accordance with the KRS Chapter 338. The compliance safety and health officer (CSHO) who conducted the inspection has found conditions which may be in violation of the Law. The information relevant to these conditions will be evaluated by the CSHO's supervisor. If it is determined that a violation does exist, you will be issued a "Citation and Notification of Penalty" which explains in detail the exact nature of the violations(s) and any associated penalties.

This pamphlet contains important information regarding your rights and responsibilities under KRS Chapter 338. The information contained herein can and should be used as a discussion guide during your closing conference with the compliance officer. For each apparent violation found during the inspection, the compliance officer has discussed or will discuss with you:

- * The nature of the violation;
- * Possible abatement dates you may be required to meet.

To minimize employee exposure to possibly hazardous conditions, abatement efforts should always begin as soon as possible.

The following general information defines the types of violations and explains the actions you may take if you receive a citation as the result of an inspection.

TYPES OF VIOLATIONS

WILLFUL: A willful violation is a violation that is marked by careless disregard of a standard or of employee safety. The violation is characterized by intentional, knowing, or voluntary (as opposed to accidental) conduct which demonstrates a careless disregard or plain indifference of the law. If an employer is aware that a hazardous condition exists and makes no reasonable effort to eliminate it he may be cited for a willful violation.

SERIOUS: A serious violation exists when the workplace hazard could cause an accident or illness, which would most likely result in death or serious physical harm, unless the employer did not know or could not have known of the violation.

REPEATED: An employer may be cited for a repeated violation if that employer has been cited previously for a substantially similar condition and the citation has become a final order. A citation is viewed as a repeated violation if it occurs within three years either from the date that the original citation becomes a final order, or from the final correction date, whichever is later. For purposes of determining whether a violation is repeated, the following criteria apply:

1. **FIXED ESTABLISHMENTS:** Citations issued to employers that have fixed establishments (e.g., factories, terminals, stores), are limited to the cited establishment. A multi-facility employer, for example, would not be cited for a repeated violation if the violation recurred at a plant other than the one previously cited.
2. **NONFIXED ESTABLISHMENTS:** For employers engaged in business having no fixed establishments (e.g. construction sites, oil and gas drilling sites), repeated violations are alleged based on prior violations occurring anywhere within the Commonwealth of Kentucky.

OTHER: A violation which has a direct relationship to job safety and health, but is not serious in nature, is classified as "other."

PENALTIES

Chapter 338 of the Kentucky Revised Statutes mandates that penalties be assessed for each willful, repeated, and serious hazard cited. The Kentucky legislature has provided that penalties of up to \$70,000 will be assessed for each willful and repeated hazard cited, and that a proposed penalty of up to \$7,000 may also be assessed for any

“serious” or “other” type hazard and/or for not abiding by posting requirements (see Posting Requirements).

The proposed penalty which is shown on the citation is calculated based on such factors as the number of employees exposed to the hazard, the duration of exposure, employee proximity to the danger zone, and the severity of the injury or illness. Credits to the penalty can be granted for the past history of the employer, good faith shown, and size of the company (based on the number of employees).

In addition, Chapter 338 mandates that a penalty be assessed for each hazard not corrected within the assigned period of up to \$7,000 per day. Also, any employer or individual who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document file required to be maintained shall, upon conviction, be punished by a fine of not more than \$10,000 or by imprisonment for no more than six months, or by both.

ABATEMENT OF THE HAZARD DOES NOT DISMISS, DELETE OR REDUCE THE PENALTY IN CORRECTING THE HAZARD WITHIN THE ABATEMENT PERIOD, THE COMPANY ABSOLVES ITSELF OF ADDITIONAL PENALTIES FOR FAILING TO CORRECT THE VIOLATIONS ORIGINALLY CITED.

POSTING REQUIREMENTS

When you receive a Citation and Notification of Penalty, you must immediately post the citation (or a copy of it) at or near the place each violation occurred to make employees aware of the hazards to which they may be exposed. The citation must remain posted for three working days or until the violation is corrected, whichever is longer. (Saturdays, Sundays, and Federal and State holidays are not counted as working days). **YOU MUST COMPLY WITH THESE REQUIREMENTS EVEN IF YOU CONTEST THE CITATION.**

EMPLOYER OPTIONS

As an employer who is cited, you may take either of the following courses of action:

1. You can, of course, correct the condition by the date set in the citation and pay the penalty, if one is proposed.
2. You may, within 15 working days of the receipt of the citation, contest any or all of the following:
 - * Citation,
 - * Proposed penalty, and/or
 - * Abatement date

HOW TO COMPLY

For violations you do not contest, you should: (1) promptly notify the Division of OSH Compliance by letter that you have taken the appropriate, corrective action within the time set forth in the citation, and (2) pay any penalties itemized therein (checks are to be made payable to the Kentucky State Treasurer and sent to the Kentucky Department of Labor. The notification you send the Division is generally referred to as a “Letter of Corrective Action.” It should explain the specific action taken with regard to each violation and state the date each corrective action was taken.

When the citation permits an extended time for abatement, you must ensure that employees are adequately protected during this time. For example, the citation may require the immediate use of personal protective equipment by employees while engineering controls are being installed. When such is the case, you must also provide the Division of OSH Compliance with periodic, progress reports on your action.

The penalties itemized on the “Citation and Notification of Penalty” are payable within 15 working days of receipt of the penalty notice. However, if you contest the citation or penalty in good faith, abatement and payment of penalties for those items

contested are suspended until the Kentucky Occupational Safety and Health Review Commission reviews your case and issues a final order. The Review Commission is an independent agency and is not a part of the Division of OSH Compliance. The final order of the Commission will either uphold, modify, or eliminate the penalties. However, penalties for items not contested are still due within 15 working days. For further details, see the section on HOW TO CONTEST.

Payment should be made by check or money order, payable to Kentucky State Treasurer. Please indicate on your payment the number found on the upper right-hand corner of your citation and send it to the Division of OSH Compliance, Kentucky Department of Labor.

If you should find that you are in need of technical assistance to comply with the regulations, such assistance can be obtained by contacting the Division of Education and Training (see page 11).

INFORMAL CONFERENCE

Before deciding whether to file a "Notice of Contest", you may wish to request an informal conference to discuss the Citation and Notification of Penalty. You may use this opportunity to:

- * Discuss ways to correct the violations;
- * Discuss problems with the abatement dates;
- * Discuss problems concerning employee safety practices;
- * Obtain answers to any other questions you may have.

You are encouraged to take advantage of the opportunity to have an informal conference if you foresee any difficulties in complying with any part of the citation. Please note, however, that an informal conference will not extend your 15 working day period in which to file a Notice of Contest.

IF YOU DO NOT CONTEST WITHIN 15 WORKING DAYS, YOUR CITATION WILL BECOME A FINAL ORDER OF THE KENTUCKY OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION AND NOT SUBJECT TO REVIEW BY ANY AGENCY.

HOW TO CONTEST

An employer who wishes to contest any portion of his or her citation must notify Kentucky's Commissioner of Labor, in writing, within 15 working days after receipt of the penalty notification.

The "Notice of Contest" must clearly state what is being contested — the citation, the penalty, the abatement date, or any combination of these factors. In addition, the notice should state whether all the violations on the citation, or just specific violations, are being contested. (For example, "I wish to contest the citation and penalty proposed for items 3 and 4 of the citation issued June 27, 1992")

A proper contest of any item suspends your obligation to abate and pay until the item contested has been judicially resolved. If you contest only the penalty, you must still correct all violations by the dates indicated on the citation. If only some items on the citation are contested, the other items must be corrected by the abatement date and the corresponding penalties paid within 15 days of notification.

After you file a Notice of Contest, your case is officially in litigation. If you wish to discuss settlement of the case, you may contact the Office of Legal Services, Labor Legal Division. All settlements of contested cases are negotiated between you and the attorney according to the rules of procedure of the Kentucky Occupational Safety and Health Review Commission.

THE CONTEST PROCESS

If the Notice of Contest has been filed within the required 15 working days, the Division of OSH

Compliance forwards your case to the Kentucky Occupational Safety and Health Review Commission.

The Commission assigns the case to an administrative hearing officer who usually will schedule a hearing in a public place as close as possible to your workplace. Both employers and employees have the right to participate in this hearing which contains all the elements of a trial, including examination and cross-examination of witnesses. You may choose to represent yourself, or be represented by an attorney. The hearing officer may affirm, modify or eliminate any contested item of the citation or penalty.

As with any other legal procedure, there is an appeals process. Once the hearing officer has ruled, any party to the case may request a further review by the full Review Commission. In addition, any of the three commissioners may, on his or her own motion, bring the case before the entire Commission for review. The Commission's ruling, in turn, may be appealed to the Franklin County Circuit Court.

HOW TO FILE FOR AN EXTENSION OF ABATEMENT PERIOD

Abatement dates are assigned on the basis of the best information available at the time the citation is issued. When you are unable to meet an abatement date because of uncontrollable events or other circumstances, you may request an extension of the abatement period.

The request must be in writing and must be submitted no later than one working day after the abatement date. To show clearly that you have made a good-faith effort to comply, it must include all of the following information:

- * Steps you have taken in an effort to achieve compliance, and dates they were taken;
- * Additional time you need to comply;

- * Why you need additional time;
- * Interim steps you are taking to safeguard your employees against the cited hazard(s) until the abatement.

TEMPORARY AND PERMANENT VARIANCES

TEMPORARY VARIANCE

If you are unable to comply with a newly promulgated standard because of the unavailability of materials, equipment, or professional or technical personnel, you may apply to the Commissioner of Labor for a **temporary variance** from that standard.

To be eligible for a temporary variance, the employer must put into force an effective program for coming into compliance with the standard or regulation as quickly as possible. In the meantime, the employer must demonstrate that all available steps are being taken to safeguard employees.

A temporary variance may be granted for up to one year, it can be renewed twice, each time for six months.

PERMANENT VARIANCE

You may also apply for a **permanent variance** from a standard if you can prove that your present facilities or methods of operation are at least as safe or healthful as those required by the standard.

In making a determination on a permanent variance, the Division of Education and Training, within the Kentucky Office of OSH reviews the employer's evidence and, where appropriate, arranges a visit to the workplace to confirm the circumstances of application. If the request has merit, a permanent variance may be granted. Final variance orders detail the employer's specific responsibilities and requirements and explain exactly how the employer's method varies from the requirements.

Please note, however, that whenever an employer applies for either a temporary or a permanent variance, he or she must inform employees of the application and of their rights to request a hearing.

EMPLOYEE COURSE OF ACTION

Employees or their authorized representatives may contest any citation, penalty, or abatement period. This notice of contest must be filed with the Kentucky Department of Labor within 15 working days after the employer receives the citation.

In cases where the employer has contested, employees have the right to file for party status before the Kentucky OSH Review Commission.

The filing of a employee contest does not suspend the employer's obligation to abate.

FOLLOW-UP INSPECTION AND FAILURE TO ABATE

If you receive a citation, a follow-up inspection may be conducted to verify that you have:

- * Posted the citation as required;
- * Corrected the violations as required in the citation; and/or
- * Adequately protected employees during multi-step or lengthy abatement periods.

In addition to providing for penalties for failure-to-post citations and failure-to-abate violations, the law clearly states that you have a continuing responsibility to comply with the law and assure your employees of safe and healthful working conditions. Any new violations discovered during a follow-up inspection will be cited.

To achieve **abatement** by the **date** set forth in the citation, it is important that abatement efforts be promptly initiated.

EMPLOYER DISCRIMINATION

KRS Chapter 338 prohibits any employer from discharging or otherwise discrimination against an employee who has exercised any right under this law, including the right to make safety and health complaints or to request a Kentucky OSH, Division of Compliance inspection. Complaints from employees who believe they have been discriminated against will be investigated by the Division of Compliance. If the investigation discloses probable violations of employee rights, court action may follow.

ADDITIONAL INFORMATION

For further information and assistance, please feel free to contact the Kentucky Office of Occupational Safety and Health, Division of Compliance, Director of Compliance, Kentucky Department of Labor, U.S. 127 South, Frankfort, Kentucky 40601 or call (502) 564-7360.

VOLUNTARY COMPLIANCE (Division of Education and Training)

The Kentucky Department of Labor's Division of Education and Training was created to assist employers and employees in understanding and complying voluntarily with occupational safety and health regulations. The Division offers a wide variety of cost-free educational and informational services. The voluntary compliance approach to reducing injuries and illnesses in the workplace is based on the realization that enforcement activities alone will not eliminate workplace hazards and that most employers will comply with the regulations if they are made aware of their responsibility and if technical assistance is provided.

The services of the Division of Education and Training are available to all interested persons but **voluntary compliance assistance** must be requested. Services include training, on-site consultation, technical assistance and publications.

TRAINING

Training is a vital component of an effective safety and health program. The Division of Education and Training offers a series of courses dealing with various subparts of the standards, which is presented at various population centers throughout the Commonwealth on an annual basis. Custom tailored training courses are presented upon request to meet the particular needs of individual companies or employee groups.

ON-SITE CONSULTATION

On-Site consultation offers employers a unique opportunity to have a safety or health professional visit their facility to help identify and correct hazards. Depending on the nature of the request, the consultant will examine the entire workplace or specific work process. Following the survey, the employer will receive a confidential report concerning the findings and recommendations of the consultant.

TECHNICAL SUPPORT

Members of the Division of Education and Training answer questions regarding standards and provide information about regulations.

Publications covering technical aspects of the standards, as well as a variety of informational brochures are available to any interested persons.

Please note that using voluntary compliance services neither decreases or increases the possibility that an establishment may be visited by the Division of Compliance.

For further information and assistance concerning voluntary compliance contact the Director, Division of Education and Training, Kentucky Department of Labor, 1047 U.S. 127 South, Frankfort, KY 40601 or call (502) 564-3070.

**SOURCES OF INFORMATION
REGARDING
OCCUPATIONAL SAFETY
AND HEALTH**

Commissioner of Labor
Kentucky Department of Labor
Frankfort, Kentucky 40601
Phone: (502) 564-3070
www.kylabor.net

For information concerning consultation,
training, OSH recordkeeping forms
and posters, contact:

Kentucky Department of Labor
Office of Occupational Safety and Health
Division of Education and Training
Frankfort, Kentucky 40601
Phone: (502) 564-3070

For information concerning occupational
safety and health enforcement contact:

Kentucky Department of Labor
Office of Occupational Safety and Health
Division of Compliance
Frankfort, Kentucky 40601
Phone: (502) 564-3070

Kentucky Department of Labor
Office of Occupational Safety and Health
Standards Development and Interpretation Branch
Frankfort, Kentucky 40601
Phone: (502) 564-3070



**Ernie Fletcher
Governor**

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